

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO

In re Troy L. Brewer) Case No. 11-58239
Maria A. Brewer) Chapter 13
) Judge C. Kathryn Preston

Debtor/s

MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS
WHOLLY UNSECURED AND VOID

Troy L. Brewer and Maria A. Brewer (the "Debtor," whether individually or collectively)
moves the court, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a) and 1327(c) , and Federal Rules of
Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of
Vericrest Financial (second mtg) aka, MERS, Deutsche Bank Nat'l Trust Co Trustee (the "Creditor")
is wholly unsecured and void.

Memorandum In Support

(1) The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on
August 9, 2011 (the "Petition Date").

(2) As of the Petition Date, the Debtor was the owner of the following real property located at
338 Oak St., Zanesville, Ohio 43701 (the "Property").
The Debtor owns the Property

in fee simple .

☒ A legal description of the Property is attached as Exhibit a .

(3) The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court
at Doc. 6 , was \$ 34,000.00 .

(4) The Debtor's interest in the Property as of the Petition Date was \$ 34,000.00 .

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts
specified and in the relative priority set forth below:

First mortgage/lien:

Vericrest Financial, aka MERS
in the amount of \$ 49,409.55 . The first mortgage/lien was obtained by the mortgagee/
lienholder on July 19, 2005 . The first mortgage/lien was filed of record on
July 25, 2005 , in the Office of the Recorder, Muskingum County, Ohio ,
as Instrument Number 1964 at page 703 .

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Subsequent mortgage/lien:
Vericrest Financial, aka MERS, Deutsche Bank Nat'l Trust Co Trustee
in the amount of \$ <u>12,818.96</u> . The subsequent mortgage/lien was obtained by the mortgagee/lienholder on <u>July 19, 2005</u> . The subsequent mortgage/lien was filed of record on <u>July 25, 2005</u> , in the Office of the Recorder, <u>Muskingum County, Ohio</u> , as Instrument Number <u>1964 at page 706</u> .
This mortgage/lien is the <u>second</u> mortgage/lien on the Property.

The Creditor's mortgage/lien sought to be avoided is in the amount of \$ 12,818.96 . This mortgage/lien was obtained by the Creditor on July 19, 2005 . This mortgage/lien was filed of record on July 25, 2005 , in the Office of the Recorder, Muskingum County, Ohio , as Instrument Number 1964 at page 706 .

(6) Value of the property: \$ 34,000.00
Total amount of all mortgages/liens superior to the Creditor's mortgage/lien: \$ 49,409.55

(7) The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§ 506(a), and the terms of the Debtor's plan. *See Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir. 2002).

(8) Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.

(9) Upon the issuance of the Debtors' discharge order, _____ , the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the the mortgage/lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Jefferson H. Massey
Jefferson H. Massey #0012374
Massey Law Office
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30 South Fourth St. Zanesville, OH 43701

Ph: (740) 453-5544

Fx: (740) 453-6956

masseylawoffice@yahoo.com

Notice of Motion

Debtor has filed a Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Jefferson H. Massey, 30 South Fourth St., Zanesville, OH 43701

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief without further hearing or notice.

Certificate of Service

I hereby certify that true and accurate copies of the foregoing Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void and Notice of Motion were served on December 16, 2016 on the following registered ECF participants, electronically through the court's ECF System at the email address registered with the Court:

Edward Henry Cahill amps@manleydeas.com

Adam Bradley Hall amps@manleydeas.com

Jefferson H Massey masseylawoffice@yahoo.com, catlin1007@yahoo.com

Frank M Pees trustee@ch13.org

Mary E. Krasovic (0085380) mek@mdk-llc.com

And on the following parties by regular U.S. Mail:

Motion M/L Void (12/14)

Frank M Pees 130 East Wilson Bridge Road Suite 200 Worthington, OH 43085
US Trustee 170 North High Street Suite 200 Columbus, OH 43215
Jefferson H Massey 30 S Fourth St Zanesville, OH 43701-3417
Vericrest Financial 16745 W Bernardo Dr Ste 300, San Diego CA 92127-1908
MERS Mortgage Electronic Reg, POB 2026, Flint, MI 48501
Troy I. Brewer and Maria A. Brewer 338 Oak St., Zanesville, OH 43701
Deutsche Bank Nat'l Trust Co, as Trustee, LSF6Mercury REO Investments Trust Series, 16745 W. Bernardo Dr. Ste 300, San Diego CA 92127,
Deutsche Bank National Trust Company/o Manley, Deas, Kochalski P.O. Box 165028 Columbus, OH 43216-5028;
MORTGAGE ELECTRONIC REG POB 2026 Flint, MI 48501-2026;
MANLEY DEAS KOCHALSKI 495 S BROAD ST STE 300, Columbus, OH 43215;
Vericrest Financial Inc., PO Box 165028, Columbus OH 43216-5028
Vericrest Financial Inc., fka The Cit Group, 13801 Wireless Way, Oklahoma City OK 73134
Manley Deas Kochalski, P.O. Box 165028, Columbus, OH 43216

Mary E. Krasovic (0085380), Holly N. Wolf (0068847), Attorneys for Manley Deas Kochalski LLC, P.O. Box 165028, Columbus OH 43216-5028;

And on the following parties by certified mail, return receipt requested:

Joe Anderson, CEO, Vericrest Financial Inc., fka The Cit Group, 13801 Wireless Way, Oklahoma City OK 73134;
Bill Beckmann, CEO, MERS Mortgage Electronic Reg, POB 2026, Flint, MI 48501;
John Cryan, CEO, Deutsche Bank Nat'l Trust Co, as Trustee, LSF6Mercury REO Investments Trust Series, 16745 W. Bernardo Dr. Ste 300, San Diego CA 92127;
Bill Beckmann, CEO, MORTGAGE ELECTRONIC REG POB 2026 Flint, MI 48501-2026;

/s/Jefferson H. Massey

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